

undertakes to demonstrate that the entire system of doctrines, rules and principles is an ingenious device which appellate courts use to keep trial courts and juries under control. It is by means of these that they exercise and extend their power. Once the appellate court says that the violation of a so-called rule is not "prejudicial error" or that action on the part of the trial court is "discretionary," we find that the rules of law involved vanish like a snow bank under a summer sun. The appellate court may still reverse but they must say why in terms of the particular case; and in this they are handicapped by the fact that the trial court knows more about the case than they do, and can state it in terms with which it is difficult to find fault. Elaborate rules give power to appellate courts; words sounding in "discretion," "the facts of the case are peculiar," etc., transfer the power to the trial court. The history of legal doctrine is in part, at least, a history of the increase in the control which appellate courts have insisted upon exercising behind the lines.

No one interested in legal institutions can afford to miss the stimulation which an intelligent consideration of the ideas in this book will afford. It is the starting point for new intellectual adventures. The reviewer predicts that it will perhaps be the inspiration of a study, such as has not yet been made, of the American Trial Court. In spite of the fact that its activities are all that most litigants are ever concerned with, this great institution still lies buried under layers of legal dialectic.

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International Arbitration from Athens to Locarno. By Jackson H. Ralston. Stanford University, Calif., Stanford University Press, 1929. pp. xvi, 417. \$5.

THE author of this book has rendered such useful service to the profession by his digest of the decisions and holdings of international tribunals in his *Law and Procedure of International Tribunals* and he has in other ways manifested so high a degree of social usefulness that we were entitled to expect more from a work bearing so expansive a title as the one under review. The reviewer was a little taken aback by the statement in the preface that "the only book containing in detail pronouncements of arbitral and other international courts of justice remains the *Law and Procedure of International Tribunals* by the present author." Thus to overlook the six-volume work of Moore, which is still the source book for most work of the kind the author has here undertaken, excites wonder.

The book is mainly descriptive rather than analytical. It is divided into five parts, of which the first, derived largely from the digest paragraphs of the author's previous volume above mentioned, seems the best. This part deals with the functions of international tribunals, the reservations to arbitration treaties, the essentials of the *compromis*, the question of jurisdiction, the form and procedure of arbitration, the internal law of arbitral tribunals, and international awards, including the sources of their invalidity and their force. The author indulges his known strictures upon international law announced in his *Democracy's International Law*¹ and expounds his thesis that international law is largely contrary to the "natural law" governing individuals. As he makes his own definition of natural law, namely, the psychological reactions produced by certain stimuli, it is not easy to quarrel with him. But he speaks not profoundly of a much

¹ See Book Review (1923) 32 YALE L. J. 520.

discussed subject. He properly objects to titles based on conquest and the supposedly binding character of treaties imposed by duress and violence. The historical fact, however, seems to be that, unless such treaties are acquiesced in, they rarely last long. His strictures upon the laws of war and neutrality, which he refuses to recognize as anything but practices, whatever that may mean, are unfounded. Admitting the folly of the institution of war as a mark of a defective and retarded civilization, the necessity for rules for conducting the duel, which materially affects third parties, is self-evident. Without such rules, the chaos would become practically universal, and force completely subjugate law. Indeed, the surprise should be not at occasional violation, but at the degree of observance. The arbitral tribunals which Mr. Ralston discusses have enforced these rules, thus refuting much of the author's argument. The objection to the suggestion that arbitration is a process of compromise, and not judicial, notwithstanding the distinguished name the suggestion bears, is well taken. For the distinction between political and legal questions the author assembles many quotations, but he has missed important ones, such as the contributions of Lauterpacht. His emphasis on legislation as a necessary factor to facilitate arbitration and correct decisions, while endorsed by others, is very debatable. On the power of tribunals to decide upon their own jurisdiction, a most important question, the author overlooks the voluminous literature which developed out of the decision of the Rumanian-Hungarian tribunal on the optants' question. Other decisions of mixed arbitral tribunals in this connection deserve consideration. German literature is practically unnoticed throughout. On the Calvo clause as a jurisdictional clause, the author quotes a number of divergent opinions, but apparently leaves unmentioned the important decision of the Mexican-United States tribunal in the *North American Dredging Co.* case² in 1926, approved by the British-Mexican tribunal in *Mexican Union Ry. Case*.³ On individuals before international courts (p. 68), much more should have been said; the subject has a literature. So with the "interior law of international tribunals."

Part II, on the influences working toward judicial settlement, deals with the movements—literary, legislative, and propagandist—which promoted international arbitration. A chapter is devoted to Latin-American work, but the Jay treaty is better entitled to mention among the modern pioneers.

Part III, on the history of arbitral tribunals, devotes two chapters (36 pages) to the 2200 years from ancient Greece to the Jay treaty. Most of the information in this sketchy record comes from Raeder, Tod, and Phillipson. The notable contributions to arbitration of the 12th and 13th centuries among the Italian city-states, so learnedly recorded and analyzed by Frey,⁴ are not even mentioned. A fragmentary account is given of the early American arbitrations and those to which the United States and Great Britain, the United States and Mexico, and the United States and other countries have been parties—all of them, down to 1896, fully covered by Moore; a few arbitrations between other nations are also briefly described. Darby did much of this work, but for reference a new recital is not without utility. The work of the defunct Central American Court of Justice is briefly set forth. To the important mixed arbitral tribunals under the recent peace treaties, three pages are devoted. Several

² *North American Dredging Co. of Texas v. United Mexican States* (1926) 20 AM. J. INT. LAW 800.

³ (1930) 24 AM. J. INT. LAW. 388, 394.

⁴ See Book Review (1931) 25 AM. J. INT. LAW 192.

important recent arbitrations, such as that of the Standard Oil Company against the Reparation Commission,⁵ do not appear to be noted.

Parts IV and V deal with the work of The Hague conferences, which were indeed most important for arbitration, and with the cases before the Permanent Court of Arbitration and the Permanent Court of International Justice. International commissions of inquiry are noted. As a descriptive survey of modern arbitrations, the work will be of interest. As an analytical or philosophical work, it largely fails. Perhaps the author had no such aspirations.

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EDWIN M. BORCHARD.

The Poor Law Code. By W. Ivor Jennings. London, Charles Knight & Co., Ltd., 1930. pp. lxxxviii, 302. 10/6.

THIS book, unlike many of the published annotations of English statutes, is not dedicated merely to the needs of the practicing solicitor or barrister. By means of a masterly introduction, which is entitled, "The Administration of the Poor Law," Mr. Jennings traces the evolution of poor relief in Great Britain from the original acts in 1388 to the last revisions in 1930. It is through this essay, and the author's summary of the general effect of each section of the Poor Law Act, 1930, that the book presents for American students a concise but carefully considered survey of this important phase of local government in England.

The significance of the Poor Law Act, 1930, rests, as Mr. Jennings points out, not so much in the number of new amendments to existing statutes, as in the fact that by it "for the first time the poor law is reduced to manageable proportions, and any intelligent person, even though he has no legal training, can now see at least the main principles of the law" (p. lxxi). This is a normal outcome of the evolution of parliamentary acts. Centuries of accumulation in the form of superimposed statutes and departmental rules and orders eventually create an unwieldy mass of enactments, difficult to administer, and often defectively bound together. Then it becomes necessary for Parliament by one new act to correlate and simplify.

The most important modern change in the method of poor relief occurred in 1929 through the Local Government Act of that year. The Poor Laws, since the famous and still basic Act of 1601, had in many ways been the core of local government powers. Each parish was given the power as well as the duty to put its able-bodied unemployed to work, to provide apprenticeships for children, and to give relief to the elderly indigent. That scheme was substantially unchanged until 1834, when, as a result of the report of a famous Royal Commission, Parliament sought to remedy the defects which had been brought to light during the intervening centuries. The chief defects had been the faulty administration of the justices, in whom control of poor relief had been vested, the heavy charges that had fallen upon the landowners, and the failure of administrators to carry out their duty under the Act of 1601 to find work for those who were able to work. By the Act of 1834, the administration of poor relief was given to a specially created Poor Law Commission. Relief to able-bodied persons was curtailed, and an attempt was made to merge individual parishes into larger districts for the purposes of the Act. Thereafter came the inevitable crystallization of commission procedure, which, as in other cases, was unpopular to the extent that efficiency was achieved at the expense of the traditions of the British Constitution. In 1871, the Poor Law Commission was absorbed by the Local Government Board, which in turn was super-

⁵ (1926) 22 AM. J. INT. LAW 404.